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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,175	06/13/2001	Allison London Brown	PPC-794	5818

27777 7590 04/14/2003

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EXAMINER
WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
3761	3

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/880,175	LONDON BROWN, ALLISON	
	Examiner	Art Unit	
	Jamisue A. Webb	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-18 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because the abstract is a copy of Claim 1. An abstract should be descriptive of the invention, not a repetition of the broadest claim. See MPEP on proper language and format of the abstract. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. With respect to Claim 1: Applicant uses the acronym MVTR in the claims, where as this is defined in the specification, it is unclear from the claims alone if this is the moisture vapor transmission rate. The examiner suggests writing out the name of MVTR in Claim 1.

5. With respect to Claim 3: the phrase "wherein, the MVTR of from about 6000 $g/m^2/24hrs$" is indefinite. The MVTR is from 6000 to what? Does this mean that it is 6000 or greater?

6. With respect to Claim 10: the phrase "an incontinence device, a, surgical dressing" is indefinite. The examiner believes this is a typographical error and the comma after the "a" should not be there, however with the comma there, the phrase is grammatically incorrect that it is unclear what "a" is associated with.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-3, 6-8, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Herriein et al. (6,446,495).

9. With respect to Claims 1-3: Herriein discloses the use of an absorbent article (see abstract), with a core and a backsheet (See Figures 2 and #). Herriein discloses the backsheet can have a moisture vapor transmission rate of 6000 $g/m^2/24hr$, and a basis weight of 23 g/m^2 (see Sample 1, Table 1 and Column 5, lines 21-55).

10. With respect to Claim 6: Column 2, lines 10-18.

11. With respect to Claims 7 and 8: Column 5, lines 34-37.

12. With respect to Claim 10: Column 1, lines 13-15.

13. With respect to Claim 11: It is the examiner's opinion that it is well known in the art that diapers are generally white or an off white color. The claim states "white, black, yellow, blue, orange, green violet and mixtures there of". A mixture of some, if not all of these colors in various amounts will result in a light brown or off white color, if enough white was used. Therefore, the absorbent article of Herriein will inherently either have one of these colors or a mixture thereof.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claims 4, 5, 12-15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herriein et al. (6,446,495).

17. With respect to Claims 4, 5 and 12: Herriein, as disclosed for Claim 1, teaches the use of the basis weight to be 23 g/m^2, but fails to disclose the basis weight being between 28g m^2 and 32 g/m^2 or more specifically 30 g/m^2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the basis weight be between 28g m^2 and 32 g/m^2 or more specifically 30 g/m^2 , since it has been held that where the general conditions of a claim are disclosed in he prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

18. With respect to Claim 13: Column 2, lines 10-18.

19. With respect to Claims 14 and 15: Column 5, lines 34-37.

20. With respect to Claim 17: Column 1, lines 13-15.

21. With respect to Claim 18: It is the examiner's opinion that it is well known in the art that diapers are generally white or an off white color. The claim states "white, black, yellow, blue, orange, green violet and mixtures there of". A mixture of some, if not all of these colors in various amounts will result in a light brown or off white color, if enough white was used. Therefore, the absorbent article of Herriein will inherently either have one of these colors or a mixture thereof.

22. Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herriein in view of Murdoch (3,554,195). Herrin, as disclosed above for Claims 1 and 9, discloses the use of diapers with tape fasteners (See Figure 3), but fails to disclose the use of a release paper. Murdoch discloses the use of release paper (16) located on the adhesive tab fasteners (See figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the release paper of Murdoch, cover the fasteners of Herriein in order to protect the adhesive before being used. (See Murdoch, column 2).

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Curro (6,198,018) discloses the use of an MVTR value.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw
April 3, 2003

WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700